DR. AMBEDKAR: THE PRINCIPAL ARCHITECT OF THE CONSTITUTION OF INDIA

Clause wise Discussion on the Draft Constitution

15th November 1948 to 8th January 1949
SECTION FOUR

Democracy defined

Democracy is a form and a method of Government whereby revolutionary changes in the economic and social life of people are brought about without bloodshed.
-from Dr. Ambedkar's address at Poona District Law Library on December 22, 1952.

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PART V

ARTICLE 15

Mr. Vice-President : With the permission of the House, I should like to revert to an article left over: that is article 15. I have before me the proceedings of the House from which it appears—this was considered on the 6th December last—that general discussion had concluded and I had called upon Dr. Ambedkar to reply. At that time it was suggested that efforts should be made to arrive at some kind of understanding so that those who had submitted certain amendments might feel satisfied. I do not know the position now ; but we cannot wait any longer. Dr. Ambedkar, will you please make the position clear ? If no understanding has been arrived at, I would ask you to reply.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I must confess that

I am somewhat in a difficult position with regard to article 15 and the amendment moved by my Friend Pandit Bhargava for the deletion of the words " procedure according to law " and the substitution of the words " due process ".

It is quite clear to any one who has listened to the debate that has taken place last time that there are two sharp points of view. One point of view says that " due process of law " must be there in this article ; otherwise the article is a nugatory one. The other point of view is that the existing phraseology is quite sufficient for the purpose. Let me explain what exactly " due process " involves.

The question of " due process " raises, in my judgement, the question of the relationship between the legislature and the judiciary. In a federal constitution, it is always open to the judiciary to decide whether any particular law passed by the legislature is *ultra vires* or *intra vires* in reference to the powers of legislation which are granted by the Constitution to the particular legislature. If the law made by a particular legislature exceeds the authority of the power given to it by the Constitution, such law would be *ultra vires* and invalid. That is the normal thing that happens in all federal constitutions. Every law in a federal constitution, whether made by the Parliament at the Centre or made by the legislature of a State, is always subject to examination by the judiciary from the point of view of the authority of the legislature making the law. The ' due process ' clause, in my judgement, would give the judiciary the power to question the law made by the legislature on another ground. That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other word's, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the

ground whether the law was good law, apart from the question of the powers of the legislature making the law. The law may be perfectly good and valid so far as the authority of the legislature is concerned. But, it may not be a good law, that is to say, it violates certain fundamental principles; and the judiciary would have that additional power of declaring the law invalid. The question which arises in considering this matter is this. We have no doubt given the judiciary the power to examine the law made by different legislative bodies on the ground whether that law is in accordance with the powers given to it. The question now raised by the introduction of the phrase ' due process ' is whether the judiciary should be given the additional power to question the laws made by the State on the ground that they violate certain fundamental principles.

There are two views on this point. One view is this: that the legislature may be trusted not to make any law which would abrogate the fundamental rights of man, so to say, the fundamental rights which apply to every individual, and consequently, there is no danger arising from the introduction of the phrase ' due process '. Another view is this : that it is not possible to trust the legislature; the legislature is likely to err, is likely to be led away by passion, by party prejudice, by party considerations, and the legislature may make a law which may abrogate what may be regarded as the fundamental principles which safeguard the individual rights of a citizen. We are therefore placed in two difficult positions. One is to give the judiciary the authority to sit in judgement over the will of the legislature and to question the law made by the legislature on the ground that it is not good law, in consonance with fundamental principles. Is that a desirable principle ? The second position is that the legislature ought to be trusted not to make bad laws. It is very difficult to come to any definite conclusion. There are dangers on both sides. For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices be trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say anything. I would leave it to the House to decide in any way it likes.

Mr. Vice-President : **I** shall now put the amendments one by one to vote.

[In all five amendments were negatived and one was withdrawn. No amendment wax adopted. Article 15 wax adopted and added to the Constitution.]

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ARTICLE 44

Mr. Vice-President : We shall now take up article 44.

The motion is : The article 44 form part of the Constitution.

I am going to call over the amendments one by one.

Amendment No. 1075—Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar :

Sir, I move—

" That in sub-clause (c) of clause (2) of article 44, for the words " such member " the words " the elected members of both Houses of Parliament " be substituted. "

Before proceeding to give the reasons for the amendment I would like with your permission to go back for a minute to clause (2) of this article and explain the scheme as set out in sub-clauses (a) and (b) of that clause. Honourable Members will see that the President is to be elected by elected Members of the Tower House of each State Legislature and by elected Members of both Houses of Parliament— the two to form a single electoral college. Sub-clause (1) of article 44 says that as far as practicable there shall be uniformity in the scale of representation of the different States in the election of the President. It would have been possible to achieve this uniformity by the simple method of assigning each member of the electoral college one vote. But this is not possible because of the disparity between the members of the Legislature and their ratio to population that exists between the .different classes of States. In the case of States in Part I of the First Schedule, article 149(3)fixes the scale of representation—one representative for every one lakh *of* population. In the case of States in Part III, no such scale is laid down. The scale may vary from State to State. In one State, it may be one representative for every l0,000 population. In another, it may be one for every 20,000. That being the position, the value of the votes cast in the election of the President by the members of the State Legislatures cannot be measured by the simple rule of assigning one vote one value. The problem, therefore, is how to bring about uniformity in the value of the votes cast by members who do not represent the same electoral unit. The formula adopted to obtain the value of a vote cast by an elected member of the Legislature of a State is to divide the population of that State by the total number of elected members of the Legislature of that State ; and to divide the

quotient so obtained by 1,000 and if the remainder is not less than 500 then add one to the dividend. This is what is stated in sub-clauses (b) and (c) of clause (2).

I now come to the amendment to sub-clause (c) which I have moved. With regard to the votes cast by members of Parliament, we are confronted by the same problem, namely, the disparity in the electoral units and consequent disparity in the value of the votes cast by them. This disparity also arises from the same causes. In the first place, the Council of States being elected by the State Legislature reflects the same disparity which exists between States in Part I and States in Pan-Ill. In the second place, there is the same disparity in the ratio of seats to population as between States in Part I and Part III in the election *of* members of Parliament.

There are two ways of achieving uniformity in the voting by members of Parliament. One is to divide the total number of votes capable of being cast by members of all the State Legislatures by the total number of members of all the State Legislatures and the quotient will be the number of votes which each member will be entitled to cast. The other method is to divide the total number of votes capable of being cast by members of the Legislatures of all the States by the total number of elected members of both Houses of Parliament. The first method is set out in sub-clause (c) as it stands. The second method is embodied in the amendment to sub-clause (c) which I have moved. The difference between the two methods lies in this. In the first method all members of. the electoral college taking part in the election of the President are treated on the same footing in the matter of valuation of their votes. According to the second method the members of Parliament are given equal strength in the matter of voting as the members of the State Legislatures will have. It is felt that members of Parliament should have a better voice than what sub-clause (c) as it stands does. Hence the amendment.

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ARTICLE 44 *(Contd.)*

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I accept the amendment No. 25 of List I to amendment No. 1083 moved by my friend Mr. Naziruddin Ahmad. The other amendments I am sorry, I cannot accept. Now, Sir in the course of the general debate, two questions have been raised. One is on the amendment of Mr. Naziruddin Ahmad. It has been pointed out by various speakers that it would be very wrong to base any election on the last census viz., of 1941. I am sure there is a great deal of force in what has

been said by the various speakers on this point. It is true that the 1941 census was in some areas, at any rate, a cooked census; a census was cooked by the local Government that was in existence, in favour of certain communities and operated against certain other communities. But apart from that, it is equally true that on account of the partition of India there has been a great change in the population and its communal composition in certain provinces of India, for instance, in the East Punjab, Bombay, West Bengal and to some extent in U.P. also. In view of the fact that the Constitution provides for representation to various communities in accordance with their ratio of population to the general population, it is necessary that not only the total population of every particular province should be ascertained but that the proportion of the various communities to which we have guaranteed representation in accordance with their population should also be ascertained before the foundations of the Constitution are laid down in terms of election.

I have no doubt about it that the Government will pay attention to the various arguments that have been made in favour *of* having a true census of the people before the elections are undertaken. If I may say so, one of the reasons which persuaded me to accept the amendment of my friend Mr. Naziruddin Ahmad is that he used the word ' latest ' in preference to the word ' last '. I thought that the word ' last ' had a sort of a local cotour in the sense that the last census may mean the periodical census which is taken every ten years ; and the ' latest ' census means the census taken before any operation of election is started.

Mr. Naziruddin Ahmad : I did not use those words. I said the last preceding census.

The Honourable Dr. B. R. Ambedkar : Anyhow, I did not pay much attention to what he said. But that certainly is my idea, that this clause shall not prevent the Government from having a new census before proceeding to have elections for the new legislature. I think that should satisfy most Members who have an apprehension on this point.

Shri Mahavir Tyagi : May I take it that you give an assurance that such a census will be taken ?

The Honourable Dr. B. R. Ambedkar : I cannot possibly give an assurance. But no government will overtook the vast changes that have taken place in the composition and the total population of the different provinces. We have guaranteed representation to a great population consisting of various minorities. There has been a great deal of debate, as Honourable Members know, over the question of weightage, and we know that weightage has been disallowed. If we now have the elections and allow them *to* take place and the seats to be assigned on the existing basis of population, when

as a matter of fact, that basis has been lost by migrations, it might result in weightage to various communities, and no representation to certain communities. Obviously in order to avoid such a kind of thing and to see that no community has any weightage, undoubtedly, government will have to see that the census is a proper census.

Pandit Lakshmi Kanta Maitra : **I** want to know whether the Honourable Member means that no election under the new Constitution should be held unless this census was taken.

Honourable Dr. B. R. Ambedkar: Well, it seems to me only a natural conclusion, because the seats for the elections cannot be assigned unless the populations of the various communities are ascertained. Therefore, that seems to me the logical conclusion, and a new census will be inevitable.

The other question that was greatly agitated by Mr. Tyagi and by Begum Aizaz Rasul and certain other members related to the election of the President. Now, there are two ways of electing the President. One way is to elect him by what is called a bare majority of the House. If a man got 51 per cent, he would be elected. That is one way of electing the President and that is the simple and straightforward one. Now, with regard to that, it may just happen that the majority party would be in a position to elect the President without the minority party having any-voice in the election of the President. Obviously no Member of the House would like the President to be elected by a bare majority or by a system of election in which the minorities had no part to play. That being so, the election of the President by a bare majority has to be eliminated, and we have to provide a system whereby the minorities will have some voice in the election of the President. The only method of giving the minorities a voice in the election of the President is, so to say, to have separate electorates and to provide that the President must not only have a majority but he must have a substantial number of votes from each minority. But that again, seems to me, to be a proposition which we cannot accept having regard to what we have laid down in the Constitution, namely, that there shall be no separate electorates. The only other method, therefore, that remained was to have a system of election in which the minorities will have some hand and some play, and that is undoubtedly the system of proportional representation, which has been laid down in the Constitution.

Mr. Naziruddin Ahmad :There is to be transferability. How can there be proportional representation when there is only one man to be elected ?

The Honourable Dr. B. R. Ambedkar : I really cannot go into this question in detail. To do so I will have to open a class and lecture on the subject ; but I cannot undertake that task at this stage. However, it is well-known and everybody knows how the system works.

Mr. Vice-President : These interruptions show that some Members are not aware of the true nature of proportional representations. You need not pay attention to these interruptions.

Maulana Hasrat Mohani: What are you going to do if there is only one candidate ?

The Honourable Dr. B. R. Ambedkar: If there is only one candidate, he will be elected unanimously (Laughter), and no question of majority or minority arises at all.

The other question asked by Mr. Tyagi was whether there was any procedure for eliminating candidates.

Shri Mahavir Tyagi : On a point of information, Sir.

The Honourable Dr. B. R. Ambedkar : No. I cannot yield. I am answering your point. Your point was whether there was a process of elimination. The point before me is that I want that the election of the President or the General representation involves elimination. Otherwise it has no meaning. Tile only thing that we have done is that instead of having several proportional representations, we have provided one single proportional representation, in which every candidate at the bottom will be eliminated, until we reach one man who gets what is called a " quota ".

Shri Mahavir Tyagi : But in the Parliament the system of alternative votes is adopted.

The Honourable Dr. B. R. Ambedkar : Alternative is only another name for proportional.

Sir, I have nothing further to say on this point.

Shri Mahavir Tyagi : Sir, I want to know.....

Mr. Vice-President : Mr. Tyagi, my difficulty is I cannot compel the Chairman of the Drafting Committee to answer your questions. Neither can I compel him to clarify your doubts.

I am going to put these amendments, one by one to vote.

I put amendment No. 1075 to vote. (This was moved by Dr. Ambedkar).

[Following two amendments were adopted and two others were negatived.]

(I) That in sub-clause (c) of clause (2) of article 44, for the words " such member " the words " the elected members of both Houses of Parliament " be substituted.

Following amendment moved by Mr. Naziruddin Ahmad was

accepted by Dr. Ambedkar.)

(2) That for the Explanation to article 44, the following Explanation be substituted:

" Explanation.—In this article, the expression ' population ' means the

population as ascertained at the last preceding census of which the relevant figures have been published."

Article 44, as amended, was adopted and added to the Constitution.

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ARTICLE 45

Shri T. T. Krishnamachari : Sir, the Honourable Member's amendment is substantially the same as the article, and deals only with the substantive part of the clause and not with the proviso. Is there any object in the Honourable Member moving his amendment ?

Mr. Mohd. Tahir : There is a difference in the meaning of the amendment and the article, and I shall explain how.

The Honourable Dr. B. R. Ambedkar : **It** is not an amendment at all : it is merely a transposition of the words. There is no difference at all.

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Mr. Vice-President : Amendment No. 1086 is disallowed as it is a verbal amendment.

Amendments Nos. 1087 and 1088 are identical. Dr. Ambedkar may move No. 1087.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

That in clause (a) of the proviso to article 45, for the word " resignation " the word " writing " be substituted.

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Mr. Vice-President : As no Member has desired to speak on the general discussion of this article, I propose to ask Dr. Ambedkar to reply to the debate. I have received a slip requesting for an opportunity to speak just now. It has come too late.

The Honourable Dr. B. R. Ambedkar : Sir, the only amendment that I accept is No. 1090 as amended by Mr. Gupte's amendment. The others, I am sorry, I cannot accept. There has been no point raised by any Member which requires any explanation.

Mr. Vice-President : I am going to put the amendments to vote.

[In all five amendment were negatived as they were not accepted by Dr. Ambedkar. Only two amendments as shown below were adopted.]

Mr. Vice-President : Now, the question is—

That in clause (a) of the proviso to article 45 for the word ' resignation ' the

word ' writing ' be substituted.

[This amendment moved by Dr. Ambedkar was adopted.]

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Mr. Vice-President : Now I shall put amendment No. 1090 as modified by amendment No. 26(A) standing in the name of Shri B. M. Gupte to the vote of the House.

The question is :

That—

(1) Article 45 be re-numbered as clause (1) of that article.

(2) In clause (a) of the proviso to the said clause as so re-numbered for the words " Chairman of the Council of States and the Speaker of the House of the People " the word ' Vice-President ' be substituted.

(3) In the said article as re-numbered add the following clause:— " (2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) of this article shall forthwith be communicated by him to the Speaker of the House of the People."

The amendment was adopted.

Article 45, as amended, was adopted and added to the Constitution.

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ARTICLE 46

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am prepared to accept the amendment of Mr. Sharma, i.e.. No. 1098, for the deletion of the words " once, but only once ".

With regard to Mr. Kamath's amendment, I think the proper time when this matter could be discussed will be when the issue as to the qualifications of the person standing for Presidentship is raised.

To Mr. Tyagi I may say that in view of the deletion of the words " once, but only once ", his fears about the Vice-President are groundless.

Mr. Vice-President : I shall now put the amendments one by one to the vote. Amendment No. 1098 The question is:

" That in article 46 the words ' one, but only once ' be deleted. "

The amendment was adopted.

Mr. Vice-President : Then amendment No. 1100.

Shri H. V. **Kamath** : In view of Dr. Ambedkar's statement, I do not want to

press it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : Then Mr. Tyagi's amendment. It does not arise after Dr. Ambedkar's speech, but some *pandit* of technicalities might say that I did not put it to the vote. So I want to know if Mr. Tyagi withdraws it or not.

Shri Mahavir Tyagi : Sir, I withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : The question is :

That article 46, as amended, form part of the Constitution.

The motion was adopted.

Article 46, as amended, was added to the Constitution.

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ARTICLE 47

Mr. Vice-President : Amendment No. 1109, Verbal ; disallowed. Amendments numbers 1110 to 1112 are of similar import. The first of these may be moved. It stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : (Bombay : General) : Mr.

Vice-President, Sir, **I** move:

" That in clause (2) of article 47, and in Explanation to clause 2. for the words ' any office or position of emolument ', wherever they occur, the words ' any office of profit ' be substituted. "

Sir, this amendment is merely intended to improve the language of the draft.

Mr. Vice-President : Amendment No. 1111. Should that be put to the vote ?

Shri H. V. Kamath (C. P. & Berar : General) : Dr. Ambedkar has stolen a march over me; this does not arise.

Mr. Vice-President : Amendment No. 1112.

Shri Mihir Lal Chattopadbyay (West Bengal : General) : That is already covered. Sir. (Amendment No. 1113 was not moved.)

Mr. Vice-President : Amendment numbers 1114, 1115 and 1116 are verbal and are disallowed.

Amendment No. 1117, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

" That for sub-clause (a) of the Explanation to clause (2) of article 47, .the following be substituted:—

" (a) he is the Governor of any State for the time being specified in Part I of the First Scheduled or is a minister either for India or for any such State ; or "

The object of this amendment is to remove a disqualification that might arise on account of the fact that a Governor of a State or a Minister is holding an office of profit under the Crown. It is desirable that the Governor of a State as well as a Minister both at the Centre and in the States should be permitted to stand for election and the rule of office of profit under the Crown should not stand in their way.

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Mr. Vice-President: Dr. Ambedkar.

Shri Syamanadan Sahaya (Bihar: General): Sir, I have.....

Mr. Vice-President : I have called Dr. Ambedkar, I am sorry. But have you any amendment?

Shri Syamanadan Sahaya: No, I have no amendment, but.....

Mr. Vice-President : If you had come to the front, you could have caught my eyes, because in that direction there is a bad glare.

Shri R. K. Sidhwa (C. P. & Berar: General): But, Sir, we have not had adequate discussion of this article. Only one member has spoken.

The Honourable Dr. B. R. Ambedkar: If they want further discussion, I have no objection.

Mr. Vice-President : Dr. Ambedkar has been good enough to say he does not mind if other Members also speak. Will Shri Syamanandan Sahaya please come to the mike ?

Shri R. K. Sidhwa: Sir.....

Mr. Vice-President : Mr. Sidhwa will always have the last word.

I shall give him the last word.

Shri Syamanandan Sahaya: Mr. Vice-President, Sir, I am here to support the amendment which has been moved by Prof. K. T. Shah.

The Honourable Dr. B. R. Ambedkar: Which amendment of 'Prof. Shah ?
Shri Syamanandan Sahaya: Amendment No. 1124 which reads like this.

' provided that any such Minister shall, before offering himself as candidate for such election, resign his office '.

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The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I regret that I am unable to accept any of the amendments which have been moved by my Honourable Friend, Prof. K. T. Shah. There are three amendments which have been moved by Prof. K. T. Shah. One of them relates to the Minister as a candidate for the Presidency and the other two amendments relate to the President. I propose to divide my observations in reply to his speeches on the three amendments into two parts. In the first part I propose to devote myself

to his amendment relating to the Minister.

Prof. K. T. Shah's amendment requires that if a person is holding the office of a

Minister and wishes to contest an election, the first condition must be that he shall resign his office as a Minister. In other words, ministership by itself would be a disqualification for election. It seems to me that Prof. K. T. Shah has not devoted sufficient attention to his amendment. In the first place, if a Minister resigns then this amendment is unnecessary. The second point which I think Prof. Shah has not considered and which seems to me to he very crucial is this. Supposing we accept his amendment that a Minister shall resign before he stands as a candidate for Presidentship, it is quite clear that between the period of the dissolution of the old Parliament and the time when the new Parliament assembles there can be no Ministers at all in charge of the administration. And the question that we have to consider is this. What is to happen to the administration during the period which is involved between the dissolution of the old Parliament and the assembly of the new Parliament ? Are we to hand over the administration to the bureaucrats or the heads of the administrative departments to carry on until the new Parliament is elected ? Or is there to be some kind of expedient whereby we are to go about and find a set of temporary Ministers who would take charge of Government during this short period of two or three months and thus forego the opportunity of contesting elections and becoming Ministers themselves in a new Parliament for the full period of their term ? It seems to me that the amendment of Prof. K. T. Shah, if accepted, would create complete administrative chaos in the Government of the country and therefore I submit.....

Shri L. Krishnaswami Bharathi (Madras : General) : It does not refer to all Ministers: it only refers to one minister.

Shri Mahavir Tyagi (United Provinces : General) : And to .Deputy Minister also.

The Honourable Dr. B. R. Ambedkar : Supposing every Minister wants to contest the election and therefore every Minister will have to resign.

Prof. K. T. Shah referred to the fact that the Ministers generally monkeyed with the election or may manipulate or exercise their influence over the administration. That of course, to some extent, is probably true. But in order to eliminate the influence which Ministers exercise or might exercise on the elections the draft Constitution has provided under certain articles (articles 289 to 292) for a special machinery to be in charge of what are called Election Commissions both in the centre as well as in the Provinces, which would take charge of the elections to Parliament as well as to the State legislatures. They

are to have complete superintendence, control and management of elections, so that whatever possibility that there exists of Ministers exercising their influence over elections has been sought to be eliminated and consequently the fear which Prof. K. T. Shah entertains has really no place at all. I am therefore, for these reasons, unable to accept his amendment.

Coming to his amendments which deal with the President, his first amendment No. 1108 sets out certain disqualifications such as conviction for treason, any offence against the State or any violation of the Constitution, etc. The reason why, for instance, we have not specifically mentioned in this particular article under discussion these disqualifications, will be obvious if the Members recall that we have made other provisions which would have the same object which Prof. Shah has in his mind. In this connection I would like to draw the attention of the House to sub-clause (c) of article 48 which requires that " the President shall be a person who shall be qualified for election to Parliament ". Now the qualifications for election to Parliament are laid down in article 83. Sub-clause (6') of article 83 leaves it to the Parliament to add any disqualifications which Parliament may think it necessary or desirable to add. It is therefore possible that the Parliament when it exercises the powers which are given to it under sub-clause (e) of article 83 may think it desirable to include in the list of disqualifications (it is empowered to add to those already enumerated under article 83) some of the propositions which Prof. K. T. Shah has enunciated in his amendment. I therefore submit that, although this particular clause does not refer to the disqualifications mentioned by Professor Shah, it is quite possible and open to Parliament to add them by any law that it may make in sub-clause *(e)* of 83.

Shri H. V. Kamath : On a point of clarification, Mr. Vice-President. if matters like ' unsound mind ' and 'undischarged insolvent ' are found important enough to be embodied in the article itself, what is the point in leaving this more vital and fundamental thing to Parliament and not giving it a place in the Constitution itself?

The Honourable Dr. B. R. Ambedkar : I do not know. It is a mere matter of logic. It is perfectly possible to say that every disqualification should be laid down here. It is perfectly possible to say that some essential things may be laid down here and the others left to the Parliament. I cannot see any inconsistency in that at all.

Now coming to the last amendment of Professor Shah, No. 1125, I think a careful perusal of the language he has used is very essential. What the Professor wants is that every person who has to be a President shall, before assuming office, divest himself of his interest, right, title, etc. in any business or concern which is being sponsored by Government or carried on by

Government either itself or through any agency, and secondly that the Government should buy that interest from the President. In regard to this, the first thing that strikes me is that this is one of the most novel propositions that I have ever seen. I do not remember that there is any Constitution anywhere in the world which lays down any such condition. I should have thought that if any such condition was necessary it is in the Constitution of the United States where the President has got an opportunity of exercising administrative control, and administrative discretion and therefore the greatest opportunity of personal aggrandisement exists there. And yet, the Constitution of the United States is absolutely silent about any such condition at all. Professor Shah no doubt has tabled his amendment because he looks upon it as a merely consequential amendment to the original proposition which he had enunciated in the form of his amendment, namely, that the President should have the same position as that of the President of the United States. But our Constitution has completely departed from the position which has been assigned to the President of the United States. As I have stated over and over again, our President is merely a nominal figurehead. He has no discretion ; he has no powers of administration at all. Therefore, so far as our President is concerned, this provision is absolutely unnecessary. If at all it is necessary it should be with regard to the Prime Ministers and the other Ministers of State, because it is they who are in complete control of the administration of the State. If any person under the Government of India has any opportunity of aggrandising himself, it is either the Prime Minister or the Ministers of State and such a provision ought to have been imposed upon them during their tenure and not on the President.

The third question that arises—1 think it is a very concrete question— is this. Supposing we laid down any such condition ; is it possible in the circumstances in which we are living, to obtain any candidate who would offer himself for the Presidentship and subject himself to the conditions which have been laid down by Professor Shah ? I doubt very much whether even Professor Shah would offer himself to be President of the Indian Union if these conditions are laid down.

Prof. K. T. Shah : It is not my custom to interrupt speakers at all. But may I give him this categoric assurance that as far I myself am concerned, he can rest assured that there will be complete fulfilment of these conditions. (Laughter).

The Honourable Dr. B. R. Ambedkar : I am glad. But this country could not carry on under the assumption that Professor Shah would be the only candidate who would offer himself for Presidentship. (Laughter) Safety lies in multiplicity of candidates. Therefore we have to consider whether, from a

practical point of view, we should have a sufficient number of candidates offering themselves for this particular post. And I have not the least doubt about it that, notwithstanding the very virtuous character of this amendment we should practically be suspending this particular provision from the Constitution if we accept this amendment.

For these reasons I do not accept any of the amendments.

Shri H. V. Kamath : Is Dr. Ambedkar opposed even to the disclosure of the candidate's interest or share ? Is he opposed even to a declaration like that ?

The Honourable Dr. B. R. Ambedkar: But that is not the amendment.

Shri H. V.**Kamat**: That is part of the amendment.

The Honourable Dr. B. R. Ambedkar: But that is not the amendment.

Mr. Vice-President: I will now put the amendments to vote one by one.

[Following two amendments were adopted; three amendments were negatived.]

Mr. Vice-President : The question is :

" That in clause (2) of article 47, and in Explanation to clause 2, for the words ' any office or position of emolument '. wherever they occur, the words ' any office of profit he substituted ".

Mr. Vice-President: The question is :

" That for sub-clause (a) of Explanation to clause (2) of article 47, the following he substituted:

'(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State; or '."

Article 47, as amended, was adopted and added to the Constitution.

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ARTICLE 47-A

Mr. Tajarnul Hussain : ..... Now, Sir, in my opinion, this is a fair amendment but I am afraid that this amendment will not be accepted by the Honourable Dr. Ambedkar. Professor Shah comes forward with beautiful amendments but they are all lost because the Honourable Member in charge of the Draft Constitution is not in favour of them. Therefore, with your permission, I want to move a verbal amendment to this.

Mr. Vice-President: I cannot allow you to do that. In that case other people would also come forward with verbal amendments. You may make a suggestion for the acceptance of Dr. Ambedkar.

Mr. Tajarnul Husain : My suggestion is this : Mr. Shah's amendment does not say that when a person is elected President he should declare and divest himself of all his personal property. He only says that he should divest himself of his rights, shares or interests in any concern aided or supported by

government and that such rights, etc. should be taken over and held in trust for him by the Government of India. I say that as it would come to the Government of India, I thought that Dr. Ambedkar would accept it. If, Dr. Ambedkar as the Law Minister of the Government of India is not going to accept it, then instead of the ' Government of India ', let it go to the President's wife and children. That is a very simple matter.....

I support the amendment and I move my oral amendment.

Mr. Vice-President : There is no amendment to be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I have nothing to say.

[Amendment of Prof. K. T. Shah was put to vote hut was negatived by the House.]

ARTICLE 48

Mr. Vice-President : On going through the amendments one by one. I find that amendments Nos. 1127, 1128 and 1130 are of similar import. Amendment No. 1130 seems to be the most comprehensive and may be moved.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir,

I move:

" That in clause (1) of article 48 :—

' (a) for the words ' either of Parliament or ' the words ' of either House of Parliament or of a House ' be substituted;

(b) for the words ' member of Parliament or ' the words ' member of either House of Parliament or of a House ' be substituted ;

(c) for the words ' in Parliament of such Legislature, as the case may be, ' the words ' in that House ' be substituted '. "

There was some defect in the original language and we have tried to improve it.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. Vice-President, we have already decided by accepting certain rules that amendments which are intended to beautify the language of an article will not be allowed. Improving the language is not now one of the objectives of an amendment. Before the amendment was moved, it looked like an imposing amendment, but Dr. Ambedkar has clearly-admitted that it was intended merely to improve the language of the article. In that view, although it has been moved, it need not be put to the vote.

Mr. Vice-President : Certain powers have been given to the Chair and the Chair is going to exercise them in the way which seems best.

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The Honourable Dr. B. R. Ambedkar : Sir, I move:

" That in clause (2) of article 48, for the words ' or position of emolument ' the words ' of profit ' be substituted. "

Sir, this amendment is just for the sake of uniformity.

Mr. Vice-President : Amendment No. 1134. Do you want me to put this to the vote ?

Shri H. V. Kamath : I have been forestalled by Dr. Ambedkar; But I would like to move amendment No. 1135.

Mr. Vice-President : We have now only come up to amendment No. 1134. Amendment No. 1135. You can move it.

Shri H. V. **Kamath** : I move. Sir,

" That in clause (3) of article 48, the words ' the President shall have an official residence and ' he deleted. "

That is to say, the clause will read thus, if the amendment is accepted. " There shall be paid to the President such emoluments and allowances, etc. etc....."

In moving this amendment. Sir, I seek a little light from Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Which amendment ?

Shri H. V. Kamath : Amendment No. 1135. My purpose in moving this amendment before the House is to request Dr. Ambedkar to throw a little light upon the necessity for incorporating such an insignificant, such a minor detail in our Constitution....

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The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I regret I cannot accept the amendments which have been moved. Professor Shah's amendment No. 1138 seems to be somewhat superfluous. It provides that the President shall be given Secretariat assistance. There is no doubt about it that it will be done whether there is any provision in the Constitution or not.

With regard to his second amendment No. 1140 prescribing that a pension be given to the President on his retirement, I find that while I am agreeable to the sentiment that he has expressed that persons who serve the public by becoming members of Parliament undergo a great deal of personal sacrifice and that it is desirable that they should not be left unprovided for towards the end of their lives, it seems rather difficult to accept this particular amendment also. According to him, every person who becomes President and serves his term of office, which is 5 years, shall, at the end of 5 years, be entitled to a pension. The second difficulty is that according to his amendment his pension

shall not be altered during his life-time. Now supposing for instance one person who has been a President and has filled his full terms of years and has obtained a pension under the amendment of Professor Shah, suppose that he is again elected to be the President, what is the position ? The position is that he continues to get his salary as the President in addition to that he will also be entitled to his pension.

We would not be in a position even to reduce the pension in order to bring it down to his salary. Therefore, in the form in which the amendment is moved, I do not think that it is a practical proposition for anyone to accept. But there is no doubt about the general view that he has expressed, that after a certain period of service in Parliament, Members, including the President, ought to be entitled to some sort of pension, and I think it is a laudable idea which has been given effect to in the British Parliament, and I have no doubt about it that our future Parliament will bear this fact in mind.

Then with regard to the question raised by Professor Kamath about residential.....

Shri H. V. Kamath : Sir, I am not Professor Kamath.

The Honourable Dr. B. R. Ambedkar : But he is quite entitled to be called Professor because he speaks so often. *(Laughter.)*

Shri H. V. Kamath : God forbid I should ever become a professor, *(Laughter.)*

The Honourable Dr. B. R. Ambedkar : Well, my friend Mr. Kamath asked me to explain why we have included this provision here, with regard to the official residence of the President, and he also twitted me on the fact that I was burdening the Constitution by mentioning it and other small minutiae. It might be though that this is a small matter and might not have been included in the Constitution. But the question I would like to ask Mr. Kamath is this. Does he or does he not intend that the President should have an official residence and that Parliament should make provision for it ? And is there very much of a wrong if the proposition was stated in the Constitution itself ? If the intention is that.....

Shri H. V. Kamath : Sir, may I know whether the Prime Minister will or will not have an official residence ?

The Honourable Dr. B. R. Ambedkar : Yes, this is merely a matter of logic. I want to know if he does or does not support the proposition that the President should have an official residence. If he accepts that proposition, then it seems to me a matter of small import whether a provision is made in the Constitution itself or whether the matter is left for the future Parliament to decide. The reason why we have introduced this matter in the Constitution is that in the Government of India Act, in the several Orders in Council which

have been issued by the Secretary of State under the authority conferred upon him by the Second Schedule of the Government of India Act, official residences, both for the Governor-General and the Governors have been laid down; and we have merely followed the existing practice in incorporating this particular provision in the Constitution; and I do not think we have done any very great violence either to good taste or done something which we do not intend to do.

Shri H. V. Kamath : On a point of clarification, Sir, may I know whether this particular clause of article 48 will stand in the way of the President being provided with more than one official residence ? It speaks of the President having " an official residence. "

The Honourable Dr. B. R. Ambedkar : Not at all. There may be two official residences.

Then, with regard to the amendment of Mr. Sarwate, No. 28, I would like to say that this matter may have to be considered when we deal with the Constitution of the States which will accede to the Indian Union. Today the situation is so fluid that it is very difficult to make any provision of the sort which has been suggested by Mr. Sarwate.

Mr. Vice-President : The amendments will now be put to vote, one by one. Amendment No. 1130, standing in the name of Dr. Ambedkar.

[All amendments of Dr. Ambedkar as shown were accepted. Amendments standing in the name of Mr. Sarwate, Mr. Naziruddin Ahmed, Mr. Kamath and Prof. K. T. Shah were negatived. Article 48, as amended, was adopted and added to the Constitution.]

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ARTICLE 49

Mr. Vice-President : We now come to article 49.

Shri T. T. Krishnamachari : Mr. Vice-President, Sir, I move:

" That in article 49, after the words ' Chief Justice of India ' the words ' or, in his absence the senior-most Judge of the Supreme Court available ' be inserted. "

Sir, this is only making a provision in case the Chief Justice of India is not present, some other Judge should do his function, and it is but proper that the senior-most judge of the Supreme Court should do this function. Sir, I trust the House will accept the amendment because it needs no further explanation.

Mr. Vice-President : Dr. Ambedkar, do you accept that amendment ?

The Honourable Dr. B. R. Ambedkar : Yes, I do.

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Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I am prepared to accept the amendment moved by Mr. T. T. Krishnamachari, that is No. 1144, and also amendment No. 1146 by Mr. Kamath, as amended by Mr. Tyagi's amendment.

With regard to the first amendment, that moved by Mr. T. T. Krishnamachari, not much argument is necessary. His amendments is certainly better than the amendment that stood in my name.

With regard to the second amendment. No. 1146, in view of the tact that I am prepared to accept it in the form amended by Mr. Tyagi, I do not think I am called upon to enter into the merits of the question. But perhaps, it might be as well that I should say a few words as to why the Drafting Committee itself did not introduce in its original draft, the words " in the name of God. " Sir, I do not think that this matter was considered fully by the Drafting Committee and therefore I cannot advance any adequate reason why they did not originally put in those words.

So far as I am concerned, I feel that this was a matter which required some consideration. If the House will permit me, I would express my own views on the matter. The way I felt about it is this. The word " God " so far as my reading goes, has a different significance in different religious. Christians and Muslims believe in God not merely as a concept, but as a force which governs the world and which governs, therefore, the moral and spiritual actions of those who believe in God. So far as Hindu theotogy was concerned, according to my reading— and I may be wholly wrong, I do not pretend to be a student of the subject—1 felt that the word " Eswara " or to use a bigger word, " Parmeswara " is merely a summation of an idea, of a concept. As I said, to use the language of integral calculus, you put sums together and find out something which is common, and you call that '" S " which is merely a summation. There is nothing concrete behind it. If in Hindu theology there is anything concrete, it is " Brahma ", " Vishnu ", " Mahesh ", " Siva ", " Shakti ". There are things which are accepted by Hindus as forces which govern the world. It seems to me, that it would have been very difficult for the Drafting Committee to have proceeded upon this basis and to have introduced phraseology which would have required several underlinings—- God, below that Siva, below that Vishnu, below that Brahma, below that Sakti and so on and so on. It is because of this embarrassment that we left the situation blank, as you will find in the Drafting Committee.

Shri A. V. Thakkar [United State of Kathiawar (Saurashtra)] : But there is one above all.

The Honourable Dr. B. R. Ambedkar : I am, however, quite happy that this amendment has been introduced. Now, some Members have raised objections to the amendment. They are afraid that the introduction of the word God in the Constitution is going to alter the nature of what has been proclaimed to be a secular State. In my judgement, the introduction of the word God does not raise that question at all. The reason why the word God is introduced is a very simple one. The Constitution lays down certain obligations upon the President. Those obligations are obviously divisible into two categories, obligations for which there is legal sanction and legal punishment provided, and there are obligations for which there are no legal rules provided, nor any punishment is provided. Consequently, in every constitution this question always arises. What is to be the sanction of such duties, such obligations, as have been imposed upon a particular functionary for which it is not possible by law to provide a criminal sanction, a penalty ? It is obvious that unless and until we decide or we believe that these moral duties for which there is no criminal or legal sanction are not mere pious platitudes, we must provide some kind of sanction. To some people God is a sanction. They think if they take a vow in the name of God, God being the governing force of the Universe, as well as of their individual lives, that oath in the name of God provides the sanction which is necessary for the fulfilment of obligations which are purely moral and for which there is no sanction provided.

There are people who believe that their conscience is enough of a sanction. They do not need God, an external force, as a sentinel or a watchman to act by their side. They think a solemn affirmation coming out of their conscience is quite enough of a sanction. If Honourable Members have read the history of this matter which is embodied in the struggle between Mr. Bradlaugh and the House of Commons, they will realize that as early as 1880 or so, Mr. Bradlaugh insisted that he was a perfectly moral being, that his conscience was quite active, and that if he took the oath his conscience was enough of a sanction for him to keep him within the traces, so to say. After a long struggle in the House of Commons, in which on one occasion Mr. Bradlaugh was almost beaten to death by the Sergeant-at-Arms for trying to sit in the House of Commons and taking part in its proceedings without taking the oath to which he raised objection. Mr. Gladstone ultimately had to yield and to provide an additional or alternative form which is called solemn affirmation. Therefore the issue that is involved in this amendment has noticing to do with the character of the State. Whether it is a secular or a religious State is a matter quite outside the bounds of the issue raised. The only question raised is whether we ought not to provide some kind of a sanction for the moral

obligation we impose on the President. If the President thinks that God is a mentor and that unless he takes an oath in the name of God he will not be true to the duties he assumes, I think we ought to give him the liberty to swear in the name of God. If there is another person with whom God is not his mentor, we ought to give him the liberty to affirm and carry on the duties on the basis of that affirmation.

I therefore submit that the amendment is a good one and I am prepared to accept it.

Mr. Vice-President : You have noticing to say on the amendments moved by Mr. Karimuddin and Prof. Shah ?

The Honourable Dr. B. R. Ambedkar : No, Sir.

[Amendment moved By T. T. Krishnamachari as mentioned before was adopted.] **.**

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Mr. Vice-President : The next amendment to be put to the vote is No. 1146. But this is identical with Mr. Mahavir Tyagi's amendment and if Mr. Kamath agrees I shall put this one to the vote.

Shri H. V. Kamath : I have no objection to Mr. Tyagi's amendment, as there is a mere verbal difference between his and mine.

Mr. Vice-President : Then I shall put Mr. Tyagi's amendment, which is an amendment to amendment No. 1146, to vote.

Shri H. V. Kamath : No, Sir. My amendment as amended by Mr. Tyagi should he put to the vote.

Mr. Vice-President : Yes, yes ; that is understood, I did not know that you were such a stickler for forms; You break so many forms systematically

The question is :

" That in article 49 for the words ' do solemnly affirm (or swear) ', the following he substituted:—

swear in the name of God
solemnly affirm

The amendment was adopted.

Article 49, as amended, was adopted and added to the Constitution.

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Mr. Vice-President : Amendment Nos. 1166, 1167, 1168 and 1169 are of similar import. Amendment No. 1167 may be moved. It stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir,

I move:

" That in sub-clause (b) of clause (2) of article 50, for the words ' supported by ' the words ' passed by a majority of ' he substituted. "

Mr. Vice-President : Amendment No. 1166 standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir : **I** want to discuss it. My amendment is quite different from Dr. Ambedkar's. They are not the same.

Mr. Vice-President : It can be put to the vote. You can take part in the general discussion and make your point then. That will be much better, I think.

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Mr. Vice-President : ...Amendment No. 1177 may be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move:

" That in clause (4) of article 50, for the words ' passed, supported by ' the words ' passed by a majority of ' be substituted. "

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The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the many amendments which have been moved to this article. I can accept only two. One is No. 1158 moved by my Friend, Mr. Gupte providing of fourteen days' notice for the discussion of a motion to impeach the President. The second amendment which I am prepared to accept is amendment No. 1160 moved by my Friend Mr. Deo, as amended by Mr. T. T. Krishnamachari. I think the original provision in the Draft Constitution did not lay down sufficient number of members as a condition precedent for the initiation of the motion. I think the change provided by the amendment is for the better and I am therefore prepared to accept it.

Now, Sir, I come to the other amendments which I am sorry to say I have not been able to accept but which I think call for a reply. The amendments which call for a reply are the amendments moved by Prof. K. T. Shah Nos. 1151,1171,1173, 1176 and 1186. Sir, the amendments which have been moved by Prof. K. T. Shah refer to two questions. The first is the scheme of impeachment which has been laid down in the Draft Constitution and the

second relates to the right of the President to appear and defend through a lawyer before the House which is investigating the charge against the President. So far as the second amendment of Prof. K. T. Shah is concerned, I do not see that there is any necessity for any such amendment at all ; because Prof. Shah referred to the article—1 think it is sub-clause (4) or (3),—it makes ample provision for permitting the President not only to appear before the investigating House, but also to be represented by any other person, namely, a lawyer. All that Prof. K. T. Shah has done is to separate this particular part of that clause and to put it as sub-clause (3) (a) in order to make it an independent proposition by itself. I do not think that there is any such necessity for the device that he has adopted.

Now, I come to the first part, namely, the drawbacks which he has shown in the scheme of impeachment provided in the Draft Constitution. Before I proceed to reply to his points, I think it is desirable that the House should have before it a clear picture of the provisions of the scheme embodied in the Draft Constitution. Any one who analyses this article will find that it embodies four, different propositions. Firstly, the motion for impeachment may be initiated in either House, either in the Council of States or in the House of the People. Secondly, such motion must have the support of a required number of members. Thirdly, the House which has passed the motion for investigation shall not be entitled to investigate the charge. And fourthly, that the House which has investigated the charge, if it finds the President guilty must do so by a majority of two-thirds.

These are the four propositions which have been embodied in this particular article. Now Prof. Shah's proposition is that the Upper House should have nothing to do with the impeachment of the President and that the jurisdiction to impeach the President, to investigate and to come to its own conclusions must be solely vested in the House of the People. I have not been able to understand the reasons why Prof. K. T. Shah thinks that the Tower House is in a special way entitled to have this jurisdiction vested in it. After all the trial of the President or his impeachment is intended to see that the dignity, honour and the rectitude of the office is maintained by the person who is holding that particular office. Obviously, the honour, the dignity and the rectitude of that office is not merely a matter of concern to the Tower House, it is equally a matter of concern for the Upper House as well. I do not, therefore, understand why the Upper Chamber which, as I said, is equally interested in seeing that the President conducts himself in conformity with the provisions of the Constitution should be ousted from investigating or entertaining a charge of any breach of conduct on the part of the President in his integrity and it is equally concerned as the House of the People. Prof. K. T. Shah felt so sure

about the correctness of his proposition that he said in the course of his argument that only those who have been slavishly copying the other constitutions would have the courage to oppose his amendments. I do not mind the dig which he has had at the Drafting Committee. As I said in my opening address, the Drafting Committee in the interests of this country has not been afraid of borrowing from other constitutions wherever they have felt that the other constitutions have contained some better provisions than we could ourselves devise. But I thought Prof. K. T. Shah forgot that if there was any person, so far as I am able to see, who has practised slavish imitation of the Constitution of the United States, I cannot point to any other individual except Prof. Shah. *(Laughter).* I thought his whole scheme which was just a substitute for the scheme of Government embodied in the Draft Constitution was bodily borrowed with commas and semi-cotons from the United States Constitution, and when he was defeated on his main proposition, his worship of the United States Constitution has been so profound, so deep, that he has been persisting in moving the other amendments which, as he himself knows, are only consequential and have no substance in themselves. I therefore do not mind the dig that he has had at the Drafting Committee.

The other proposition which Prof. K. T. Shah has sought to introduce in the Constitution is that there should be a concurrence of the other House. He has evidently decided to accept the main scheme embodied in the Draft Constitution. What he wants is that even if the one House which has investigated the offence has come to a conclusion, that conclusion ought not to have effect unless it has been adopted by the other House. I cannot understand why, for instance, the verdict of a jury—and this is no doubt a sort of jury, which will investigate and come to a conclusion—1 do not understand why the verdict of one House, which it would have come to after investigation should be submitted to another jury. I have never known of any such principle or precedent at all. Secondly, I do not understand what is to be the effect if the other House does not adopt. Is the other House required to adopt only by bare majority or two-thirds majority ? Supposing the other House does not adopt the conclusion which has been arrived at by one House, what is to be done ? Obviously there will be a tie. Prof. K. T. Shah provided in my judgement, no remedy for the dissolution of that tie. For these reasons, I am unable to accept any of the amendments moved by Prof. K. T. Shah.

There is another amendment which I might deal with because it is analogous to the amendments moved by Prof. K. T. Shah, and that is amendment No. 1178 moved by my Friend, Mr. Mohd. Tahir. He says that it is unnecessary to provide for a two-thirds majority for a charge of being guilty of violation of the Constitution. He thinks that a bare majority is enough. Now,

Sir, I think my Friend, Mr. Mohd. Tahir has not taken sufficient notice of the fact that a motion for impeachment is very different from a motion of no confidence. A motion of no confidence does not involve any shame or moral turpitude. A motion of no confidence merely means that the party does not accept or the House does not accept the policy of the Government. Beyond that no other censure is involved in a no confidence motion. But, an impeachment motion stands on a totally different footing. If a man is convicted on a motion for impeachment, it practically amounts to the ruination of his public career. That being the difference, I think it is desirable that such an important consequence should not be permitted to follow from the decision of a bare majority. It is because of this difference that the Drafting Committee provided that the verdict of guilty should be supported by a two-thirds majority.

Now, Sir, I come to the amendments of my Honourable Friend. Kazi Syed Karimuddin. His first amendment which I propose to take for consideration is amendment No. 1152. By this amendment he wants to add treason, bribery and other high crimes and misdemeanours after the words, ' violation of the Constitution '. My own view is this. The phrase ' violation of the Constitution ' is quite a large one and may well include treason, bribery and other high crimes or misdemeanours. Because treason, certainly, would be a violation of the Constitution. Bribery also will be a violation of the Constitution because it will be a violation of the oath by the President. With regard to crimes, the Members will see that we have made a different provision with regard to the trial of the President for any crimes or misdemeanours that he may have made. Therefore, in my view, the addition of these words, treason and bribery, are unnecessary. They are covered by the phrase " violation of the Constitution ".

His other amendment is amendment No. 1170, whereby Mr. Karimuddin seeks to provide that when an investigation is being made into the charge of impeachment, the Chief Justice of India shall preside. I have no quarrel with his proposition that any investigation that may be undertaken by any House which happens to be in charge of the impeachment matter should have the investigation conducted in a judicial manner, having regard to all the provisions which are embodied in the Criminal Procedure Code and the Evidence Act. As I said, I have no quarrel with his objective ; in fact, I share it. The only point is this : whether this is a matter which should be left for the two Houses to provide in the Rules of Procedure or whether it is desirable to place this matter right in the Constitution in a definite and express manner. My friend Mr. Karimuddin will see that in sub-clause (3) it is provided that the House shall investigate, and therefore it is quite clear that both the Houses of

Parliament in making the rules of procedure will have to embody in it a section dealing with the procedure relating to impeachment. Because, it may be, at one time the initiation may take place in the Upper Chamber and trial may take place in the Tower Chamber, and *vice versa.* So, both the Houses will have to have a section dealing with this matter in the procedure of each House. That being so, there is nothing to prevent the legislature from setting out in that part of the procedure of the two Houses that wherever that investigation is made, either the Chief Justice shall preside or some other judicial officer may preside, and therefore it seems to me that his object will be achieved if what I submit is carried out by the procedural part of the Rules of the two Houses. This provision is therefore quite unnecessary.

I come to his third amendment. No. 1187. He wants that the Constitution should lay down the disqualifications which must necessarily arise out of a charge of guilt on impeachment. The language that he has borrowed I see is from the United States Constitution. My view with regard to this matter is this. So far as membership of the legislature is concerned, as I pointed out on an earlier occasion, the matter is covered by the provision contained in article 83 which lays down the disqualifications for membership of the legislature. As I then stated, it would be perfectly Possible for Parliament in laying down additional disqualifications to introduce a clause saying that a person who has been impeached under the Constitution shall not be qualified to be a member of the legislature. Therefore, by virtue of article 83, it would be perfectly possible to exclude a President who has been impeached from membership of the legislature.

The only other matter that remains is the question of appointment to office. It seems to me that there are several considerations to be borne in mind. It is quite true that the provisions of the Draft Constitution leave this matter open. But, I think it would be perfectly possible for Parliament, when enacting, a Civil Servants Act, as I have no doubt the future Parliament will be required to do, to lay down the qualifications for public service, their emoluments and all other provisions with regard to public service. Obviously, it would be open to Parliament to say that any person who has been impeached under the law of the Constitution shall not be a fit person to be appointed to any particular post, either an ambassadorial post, outside the Government, or inside the Government in any particular department. Therefore, that matter, I see, can also be covered by parliamentary legislation.

Shri H. V. Kamath : Am I to understand that Dr. Ambedkar is personally in favour of this amendments ?

The Honourable Dr. B. R. Ambedkar: Yes ; I think there is nothing in this amendment except the fact that this was met by other ways.

Now, Sir, the other question is this : is it necessary to have these disqualifications laid down specifically and expressly in the Constitution ? It seems to me that there is no necessity, for two reasons. One is that no person who has been shamed in this manner by a public trial and declared to be a public enemy would ever have the courage to offer himself as a candidate for any particular post. Therefore, that possibility, I think, is excluded by this consideration. The second is this : whether the people of this country would be so wanting in sense *of* public duty and public service to elect any such person, if he, as a matter of fact, stood. I think it would be too shameful an imputation to the people of this country to say that it is necessary to make an express provision of this sort in the Constitution because the people of this country are likely to elect persons who are criminals, who have committed breach of trust and who have failed the public in the performance of their public duties. I think these weaknesses are inherent in all societies and no good purpose will be served by advertising them by putting them in the Constitution. I therefore think that the amendments, however laudable they are, are not necessary to be embodied in the Constitution.

Mr. Vice-President : The amendments which have been moved will now be put to vote.

[Following amendments were accepted by Dr. Ambedkar and adopted by the House.]

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Mr. Vice-President : **I** now put to vote amendment No. 1160 as modified by the amendment of Mr. T.T. Krishnamachari.

The question is:

" That is sub-clause *(a)* of clause (2) of article 50, for the words • thirty members ', the words ' one-fourth of the total number of members ' be substituted. "

The amendment was adopted.

Mr. Vice-President : The question is :

" That in sub-clause (a) of clause (2) of article 50, for the words ' after a notice ' the words ' after at least 14 days notice ' he substituted. "

The amendment was adopted.

Mr. Vice-President : The question is :

" That in sub-clause (h) of clause (2) of article 50, for the words ' supported by ' the words ' passed by a majority of ' he substituted. "

The amendment was adopted.

[In all 15 amendments were negatived. One of them was discussed as under.]

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Mr. Vice-President : The question is: Amendment No. 1185.

Mr. Naziruddin Ahmad : Sir, *no* reply has been given to my amendment by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I said I oppose it.

Mr. Vice-President : The question is :

" That in clause (4) of article 50, for the words ' date on which ', the words ' time when ' be substituted. "

The amendment was negatived.

[Article 50, as amended wax adopted and added to the Constitution.]

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ARTICLE 51

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Mr. Vice-President : Amendments Nos. 1195, 1196 and 1197 are disallowed, being verbal ones. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I am sorry I cannot accept the amendment moved by Prof. K. T. Shah. His amendment seems to be covered altogether by article 54 (1). I tail to find any difference between the amendment that he has moved and the provision contained in sub-clause (1) of article 54. I think if he considers this article, he will find that his amendment is unnecessary and superfluous.

With regard to the other amendment, the point of difference is that any one who is elected as a result of the resignation and so on, should only occupy the Chair of the Presidentship during the balance of the term, while the provision contained in the Constitution is to the effect that if a person is elected as a result of resignation, death and so on, he should continue to be the President for the full term prescribed by the Constitution. I see no reason why the term of office of a person who has been elected to the office should not be the full term prescribed by the Constitution and why he should be limited only to the balance of the term. I therefore, see no justification for the amendment at all.

[All the three amendments were negatived. Article 51 was adopted to the Constitution. The motion was adopted. Article 51 wax added to the Constitution.]

ARTICLE 52

[Article 52 was adopted without discussion and added to the Constitution.]

ARTICLE 53

Mr. Vice-President : Then we *come* to article 53.

Amendment No. 1201 is being disallowed because it has the effect of a negative vote. Amendments Nos. 1202 and 1203 seem to be identical and I therefore allow amendment No. 1202 to be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

" That in article 53, for the words ' or position of emolument ' the words ' of profit ' be substituted. "

Mr. Vice-President : Then No. 1204 standing in the name of Mr. Mohd. Tahir.

Mr. Mohd. Tahir : I am not moving it, Sir.

Mr. Vice-President : Then amendment No. 1205 standing in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move: "

That to the proviso to article 53, the following be added:—

' and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution. ' "

The provision is intended to prevent making a double profit.

Mr. Vice-President : There is one amendment sent in by Mr. Naziruddin Ahmad, No. 33. This is formal and is disallowed.

Now I am putting these amendments to vote. Has any Member anything to say on these amendments ?

Shri H. V. Kamath : On a point of information, Sir, with reference to amendment No. 1205, will the Vice-President, when he acts as President, draw the salary and allowances of the President or those of the Vice-President only ?

The Honourable Dr. B. R. Ambedkar : The salary of the President, salary of the office.

Mr. Vice-President : Then I am putting these amendments to vote. I shall put No. 1202 standing in the name of Dr. Ambedkar.

The question is :

" That in article 53, for the words ' or position of emolument ' the words ' of profit ' he substituted. "

The amendment was adopted.

Mr. Vice-President : Do you want me to put your amendment to vote, Mr. Naziruddin Ahmad, which is identical with the previous one ?

Mr. Naziruddin Ahmad : No, Sir.

Vice-President : Then I shall put to vote amendment No. 1205.

The question is : "

That to the proviso to article 53, the following be added:—

' and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution '. "

The amendment was adopted.

Article 53, as amended, was adopted and added to the constitution.

ARTICLE 54

Mr. Naziruddin Ahmad : Sir, I beg to move :

"That in clause (1) of article 54, for the words 'date on which ', the words ' time when ' be substituted "

(Speech of N.A.)

Mr. Vice-President : ...Amendments Nos. 1211 and 1210 are of similar import but the former is more comprehensive and may be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

" That to clause (3) of article 54, the following be added:— ' and be entitled to such privileges, emoluments and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule '."

This merely makes good an omission in the Draft Constitution.

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The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I find that in the amendments that have been moved there are really three points which have been raised. One point which has been raised by my friend Mr. Naziruddin Ahmad relates to time. We all know by now how very meticulous my friend Mr. Naziruddin Ahmad is and he wants to have the Constitution specifically state the time when a President frees himself from office and another persons

takes over that office. I do not know whether so much meticulousness is necessary in this Constitution. However, what I find difficult to accept in the amendment which he has moved is that he has not particularised what is system of timing which he has in mind. Is it the Greenwich time, the Standard time, the Bombay or Calcutta time ?.....

Mr. Naziruddin Ahmad : I mean the actual time of appointment.

The Honourable Dr. B. R. Ambedkar : What is the time may be very different.

Unless he prescribes the system I do not think that the introduction *of* the word 'time' introduces any greater clarity or definiteness at all.

Secondly, so far as this particular clause is concerned I find that his amendment is quite unnecessary, because if he will read sub-clause (1) of article 54 he will see that it is stated " to fill such vacancy enters upon his office ". Surely the entering upon office will he at sometime in the day—it may be midnight or it may be 12 o'clock in the day. therefore time is specified so to say by implication and this amendment is therefore quite unnecessary.....

Mr. Naziruddin Ahmad : The clause provides that the Vice-President shall act until the ' date ' on which the new President enters upon his office and not the time when he does so.

The Honourable Dr. B. R. Ambedkar : Surely it will be sometime on some day on which he will enter the office. He may probably consult an astrologer to find out what is the auspicious moment. However, the amendment is quite unnecessary.

My friend Mr. Kamath said that in replying to the debate on the previous article I stated or rather in moving my amendment I stated that the Vice-President when acting as the President shall have the same emoluments as the President. He found some difficulty in reconciling that statement with the amendment which I have moved, which gives the Parliament the power to fix the salary of the Vice-President when acting as the President. If my Friend Mr. Kamath were to turn to page 161 of the Draft Constitution he will find that there is a schedule fixing the salary of the President and paragraph 5 of that schedule definitely provides for the salary of the President. Surely when a person is acting as the President, no matter at what early stage in life he has climbed to that post, he will be entitled to get that salary according to this Constitution. But it was felt that it might be necessary to leave the matter to Parliament to fix a different scale of salary for a person who is assuming the office of the President expressly for a very short duration. Parliament may not like to give him the same salary, because the tenure of his office is certainly not of the same duration as that of the President himself. Consequently, if

Parliament makes no provision, then he gets the salary of the President. But Parliament may make provision to give him a different salary. It is for that purpose the amendment has been moved.

Shri H. V. Kamath : Sir, may I invite the attention of my Honourable Friend Dr. Ambedkar to article 48 clause (4) which lays down that the emoluments and allowances of the President shall not be diminished during his term of office ? Am I to understand that you make a distinction between the Vice-President acting as President and the President ?

The Honourable Dr. B. R. Ambedkar : Yes, certainly.

Shri H. V. Kamath : Sir, Just now when I raised objection to an amendment to the last article. Dr. Ambedkar said that the Vice-President shall draw the salary and allowances of the President while acting as President.

The Honourable Dr. B. R. Ambedkar : Unless Parliament otherwise provides, the Vice-Presidents gets the salary of the President when he acts for him. There is no reason why Parliament should not be given authority to fix the scales of pay of a President who may be there for a short duration.

Pandit Bhargava raised another point and that was to the effect that there was no provision for the impeachment of the Vice-President when acting as President. Obviously, when a Vice-President becomes the President, all the duties and obligations which are imposed upon the President fall upon him without making any express mention of the fact at all. If during his tenure of office as President, the Vice-President commits any of the offences or acts which expose the President to the risk of being impeached, he will not have any kind of immunity by reason of the fact that he is either a Vice-President or is acting as President, *pro tempore.* There is therefore no necessity for making any provision for it.

Mr. Naziruddin Ahmad : Mr. Vice-President, may I ask .....

The Honourable Dr. B. R. Ambedkar : I do not submit myself to any cross examination at this stage.

Mr. Vice-Pesident : Mr. Naziruddin Ahmad may go back to his seat.

Mr. Naziruddin Ahmad : I want to draw the attention of the Honourable Dr. Ambedkar to an oversight.

Mr. Vice-President : **He** refuses to listen to it. What can I do ? I cannot compel him to listen.

Mr. Naziruddin Ahmad : No one can compel him. The point is that in clause (3) of article 54.....

Mr. Vice-President : **I** am going to put the amendment to vote. Dr. Ambedkar has said that he will not give any reply.

Mr. Naziruddin Ahmad : I hope he will reconsider the matter.

Mr. Vice-President : I have not called upon Mr. Naziruddin Ahmad to

speak.

Mr. Naziruddin Ahmad : Sir, I want only to draw the attention of the House to a point which might influence the votes.

Mr. Vice-President : Why not do so at the third reading stage ? I am going to put the amendment *to* vote.

Mr. Naziruddin Ahmad : But, Sir, this is a matter of great importance.

Mr. Vice-President : You think so. May I ask you respectfully to go back to your seat ?

Mr. Naziruddin Ahmad : I shall comply with your request.

Mr. Vice-President : **I** shall now put amendment No. 1205 standing in the name of Mr. Naziruddin Ahmad to vote.

The amendment was negatived.

[Amendment by Dr. Ambedkar as mentioned earlier was adopted.]

Article 54, as amended, was adopted and added to the constitution.

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ARTICLE 55

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Mr. Vice-President :... Amendment No. 1224 Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move.

" That in clause (2) of article 55, for the words ' either of Parliament or ' the words ' of either House of Parliament or of a House ' for the words ' member of Parliament or ' the words ' member of either House of Parliament or of a House '. and for the words ' in Parliament or such Legislature, as the case may be ' the words ' in that House ' be substituted respectively"

This is only to improve the language. There is no point of substance in it.

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Mr. Vice-President : The next two amendments Nos. 1232 and 1233 are disallowed as being verbal.

Amendments Nos. 1234 standing in the name of Dr. Ambedkar, 1235 and 1239 standing in the name of Mr. Naziruddin Ahmad are of similar import and I am, therefore asking Dr. Ambedkar to move his amendment, which seems to me the most comprehensive one.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

" That in clause (4) of article 55, for the words ' or position of emolument ' wherever they occur the words ' of profit ' be substituted."

Mr. Vice-President : Amendment No. 1235 stands in the name of Mr. Naziruddin Ahmad. Does he want me to put this to the vote ?

Mr. Naziruddin Ahmad : No , Sir, the previous amendment will cover it.

Mr. Vice-President : What about amendment No. 1239 ?

Mr. Naziruddin Ahmad : The same consideration would apply.

(Amendment No. 1236 was not moved.)

Mr. Vice-President : Amendments Nos. 1237 and 1238 are verbal and are, therefore, disallowed.

Amendment No. 1240 stands in the name of Dr. B. R. Ambedkar. He may move it.

The Honourable Dr. B. R. Ambedkar : Sir, I move :

" That for sub-clause (a) of the Explanation to clause (4) of article 55, the following be substituted :—

'(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State, of."

This matter has already been debated last time.

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Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, I regret that I cannot accept any of the amendments which have been moved, to this article. So far as the general debate is concerned, I think there are only two amendments which call for any reply. The first is the amendment moved by Mr. Tahir, No. 1215. Mr. Tahir's amendment proposes that the same system of election which has been prescribed for the President should be made applicable to the election of the Vice-President. Now, Sir, the difference which has been made in the Draft Constitution between the system of election to the Presidentship and the system of election for the Vice-Presidentship is based upon the functions which the two dignitaries are supposed to discharge. The President is the Head of the State and his powers extend both to the administration by the Centre as well as of the States. Consequently, it is necessary that in his election, not only Members of Parliament should play their part, but the Members of the State Legislatures should also have a voice. But when we come to the vice-President, Ms normal functions are merely to preside over the Council of States. It is only on a rare occasion, and that too for a temporary period, that he may be called upon to assume the duties of a President. That being so, it does not seem necessary that the Members of the State Legislatures should also be invited

to take part in the election of the Vice-President. That is the justification why the Draft Constitution has made a distinction in the modes of election of these two dignitaries.

The second amendment which calls for a reply is the amendment moved by Mr. Naziruddin Ahmad, No. 1219. He has suggested that the word " assembled " should be dropped. Now, the reason why the word " assembled " has been introduced in this article is to avoid election being conducted by posting of ballot papers. We all know that the postal system, when used for the purpose of electioneering is liable to result in failure. Either the ballot papers posted may not reach the destination and may be lost in transit; or it is perfectly possible for a candidate to send round his agents in order to collect the ballot papers so that he may obtain possession of them, sign them himself and send them on without giving any opportunity to the elector Himself to exercise his freedom in the matter of election. It is for this reason that it was decided that the election should take place when the two Houses assemble, so as to prevent the misuse of posting. Now, I do not think that the calling together of a meeting of the Members of Parliament for this purpose is going to introduce in practice a difficulty, or is going to introduce any inconvenience. After all. Members of Parliament would be meeting together for the purposes of legislation, and it would be perfectly possible to have the election during one of those sessions. I, therefore, submit that the original language is the more justifiable one, in view of the circumstances I have mentioned.

Now, Sir, with regard to Prof. K. T. Shah's amendment that the disqualifications, with regard to the Vice-President should be specified in the Constitution itself, that is a matter which I have already dealt with when replying to a similar amendment moved by him with regard to the President, and I said that this is a matter which could be provided for by law made by Parliament.

With regard to the suggestion which has been made both by Mr. Bharathi and Mr. Naziruddin Ahmad about the use of the words " alternative vote", all I can say is this. If it is merely a matter of change of language, it might be possible for the Drafting Committee at a later stage, to consider this matter. But if—and I am not prepared to commit myself one way or the other—the alternative vote does involve some change of substance, then I am afraid it will not be possible for us to consider this matter at any stage at all.

Mr. Vice-President : I am now going to put the different amendments to vote, one by one.

[All the amendments except those moved by Dr. B. R. Ambedkar were negatived. Dr. Ambedkar's amendments are mentioned earlier.]

Article 55, as amended, was adopted and added to the Constitution.

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ARTICLE 56

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The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I regret my inability to accept any of the amendments that have been moved to article 50.1 should, however, like to meet some of the points that have been made by those who have moved the amendments. Sir, the first amendment was by Prof. Shall which laid down that provision should be made for pay and pension for the Vice-President. This is a matter which Prof. Shah has also raised in connection with the office of the President and I had stated my objection to making any such provision in the Constitution itself.

The Honourable Shri K. Santhanam (Madras : General) : May I point out that in Second Schedule express provision has been made ?

The Honourable Dr. B. R. Ambedkar : Having explained my position with regard to that point, I shall not repeat what I have said then. Coming to sub-clause (b) of article 56, various points have been raised. First of all a point has been raised that the words ' bribery, corruption etc. ' should be added. Personally I do not think that any such particular phrase is necessary. Want of confidence is a very large phrase and is big enough to include any ground such as' corruption, bribery etc. Therefore that amendment, in my judgement, is not necessary. The second point that has been made is that the removal of the Vice-President should be governed by the same rules as the removal of the President *viz..,* that there should be a majority of two-thirds. Now, Sir, with regard to that point. I would like to draw the attention of the House that although the Constitution speaks of Vice-President, he really is a Chairman of the Council of States. In other words, so far as his functions are concerned, he is merely an opposite number of the Speaker Of the House of People. Consequently in making a comparison or comment upon the provisions contained in sub-clause *(b)* of article 56 those provisions should be compared with the articles dealing with the removal of the Speaker and they are contained in article 77(c). If this article 56(b) is compared with the article 77(c), members will find that the position is exactly identical. The same rules which are made applicable to the removal of the Speaker are also made applicable to the removal of the Vice-President who, as I have stated, is really another name for the Chairman of the Council of States. Consequently, the

requirement of two-thirds majority is unnecessary.

And then my friend Mr. Kamath has raised what I might call a somewhat ticklish question. He said that sub-clause (b) of this article speaks of a majority, while when the reference is made to the House of the People, no such phraseotogy is used. Now, the matter is quite simple. Whenever we have said that a certain resolution has to be passed, it is understood that it has to be passed by a majority of the House. It is only when a special majority is mentioned that a reference is made to a majority and not otherwise. Now, I quite agree that his argument is that although we do not mention or specify any particular majority with respect to the Council of States, we have still used the phraseotogy—passed by a majority. Why is this distinction made ? Why is this distinction between the phraseotogy used in regard to the Council of States and in regard to the House of the People ? Now, the difference has been made because of the word " then " occurring there. That word " then " is important. The word " then " means all members whose seats are not vacant. It does not mean members sitting or present and voting. It is because of this provision, that all members who are members of Parliament and whose seats are not vacant, that their votes also have to be counted, that we have said—passed by a majority of the then members.

Shri H. V. Kamath : Does it mean the total number of members of the Council of States ?

The Honourable Dr. B. R. Ambedkar : Yes, The word ' then ' is necessary.

Shri H. V. Kamath : On a point of clarification. Sir. Yesterday in article 50, we used the phraseotogy ' passed by a majority ' in place of the two-thirds majority. Should we not do the same thing here to make the meaning clearer '?

The Honourable Dr. B. R. Ambedkar : I shall explain it presently. The reason is due to the fact that we have to use the word ' then ' which is intended to distinguish the case of members present and voting, and members who are members of the House whose seats are not vacant, and voting.

Shri H. V. Kamath : Am I to understand that unless otherwise specified, when you say a resolution is passed or adopted, it means that it is by a simple majority ?

The Honourable Dr. B. R. Ambedkar : Yes. Now, coming to the point raised by my friend Mr. Tahir, amendment No. 1266. If I understood him correctly, what he says is that the resolution of no confidence should require to be passed by two-thirds. This may be good or it may be bad. I cannot say. All I can say is that this provision is also on a par with the provision regarding the want of confidence in the Speaker. There also we do not require that it

should be passed by two-thirds majority or two-thirds of the members of the House.

Then, coming to the amendment of my friend Mr. Naziruddin Ahmad, who wants that in clause (c) after the word " term " words such as resignation etc. should be inserted. This amendment is absolutely unnecessary, because this article does not make any provision for filling casual vacancies.

There is no necessity for making any provision for casual vacancies because under article 75, sub-clause (1) there is always the Deputy Chairman who is there to step in whenever there is any casual vacancy. Consequently such an amendment is unnecessary.

Sir, I hope that with this explanation, the House will accept the article as it stands.

Mr. Vice-President : **I** may now put the amendments, one by one to vote.

[All the amendments were negatived. Article 56 was adopted and added to the Constitution.]

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ARTICLE 57

The Honourable Dr. B. R. Ambedkar : I am afraid Prof. K. T. Shah has not considered the matter as fully as he ought to have before moving his amendment. The omission of the Vice-President from article 57 is a very deliberate one, because as my friend Mr. Tajarnul Husain has just now pointed out, his main functions, which are those of the Chairman of the Council of States, have been amply provided for by article 75 (1) where there is a Deputy Chairman who will function in his absence. It is therefore unnecessary to introduce any such amendment in article 57.

My friend Prof. Shah said that I was really borrowing very liberally from the amendments of other friends whenever I found that the Draft was in some way defective. I think Prof. K. T. Shah, if I may say so, has indirectly paid me a compliment because, as Emerson has said, " A genius is the most indebted man " and I am certainly most indebted to my friends.

Mr. Vice-President : I am now putting the amendments to vote.

The question is :

" That in article 57, after the words ' the functions of President ' the words ' or Vice-President ' be added. "

The amendment was negatived.

Mr. Vice-President : There are no other amendments.

The question is :

" That article 57, stand part of the Constitution. "

The motion was adopted.
Article 57 was added to the Constitution.

[Article 58 was added to the Constitution without any amendment.]

ARTICLE 59

Mr. Vice-President : Does Dr. Ambedkar wish to say anything on this amendment moved by Mr. Tajarnul Husain ?

The Honourable Dr. B. R. Ambedkar : Yes, Sir. It might be desirable that I explain in a few words in its general outline the scheme embodied in article 59. It is this : the power of commutation of sentence for offences enacted, by the Federal Law is vested in the President of the Union. The power to commute sentences for offences enacted by the State Legislatures is vested in the Governors of the State. In the case of sentences of death, whether it is inflicted under any law passed by Parliament or by the law of the States, the power is vested in both, the President as well as the State concerned. This is the scheme.

With regard to the amendment of my friend Mr. Tajarnul Husain, his object is that the power to commute sentences of death permitted to the Governor should be taken away. Now, sub-clause (3) embodies in it the present practice which is in operation under which the power of commuting the death sentences is vested both in the Governor as well as in the President. The Drafting Committee has not seen any very strong arguments for taking away the power from the Governor. After all, the offence is committed in that particular locality. The Home Minister who would be advising the Governor on a mercy petition from an offender sentenced to death would be in a better position to advise the Governor having regard to his intimate knowledge of the circumstances of the case and the situation prevailing in that area. It was therefore felt desirable that no harm will be done if the power which the Governor now enjoys is left with him. There is, however, a safeguard provided. Supposing in the case of a sentence of death the mercy petition is rejected, it is always open under the provisions of this article, for the offender to approach the President with another mercy petition and try his luck there. I do not think there is any great violation of any fundamental principle involved or any inconvenience that is likely to arise if the provisions in the draft article are retained as they are.

Mr.Vice-President : Now I will put the amendment of Mr. Tajarnul Husain to vote. The question is : " That clause (3) of article 59 be deleted. " The amendment was negatived.

Mr. Vice-President : I shall now put article 59 to vote.

The question is :

" That article 59 stand part of the Constitution. " Article 59 was adopted and added to the Constitution.

ARTICLE 60

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The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, I am sorry that I cannot accept either of the two amendments which have been moved to this proviso, but I shall state to the House very briefly the reasons why I am not in a position to accept these amendments. Before I do so, I think it is desirable that the House should know what exactly is the difference between the position as stated in the proviso and the two amendments which are moved to that proviso. Taking the proviso as it stands it lays down two propositions. The first proposition is that generally the authority to execute laws which relate to what is called the Concurrent field, whether the law is passed by the Central Legislature or whether it is passed by the Provincial or State Legislature, shall ordinarily apply to the Province or the State. That is the first proposition which this proviso lays down. The second proposition which the proviso lays down is that if in any particular case Parliament thinks that in passing a law which relates to the Concurrent field, the execution ought to be retained by the Central Government, Parliament shall have the power to do so. Therefore, the position is this ; that in all *cases,* ordinarily, the executive authority so far as the Concurrent List is concerned will rest with the units, the Provinces as well as the States. It is only in exceptional cases that the Centre may prescribe that the execution of a Concurrent law shall be with the Centre. The amendments which have been moved are different in their connotation. The first amendment is that the Centre should have nothing to do with regard to the administration of a law which relates to matters placed in the Concurrent field. The second amendment which has been moved by my Honourable Friend, Pandit Kunzru, although it does not permit the Centre to take upon itself the execution of a law passed in the Concurrent field, is prepared to permit the Centre issue directions, with regard to matters falling within Items 25 and 37, to the Provincial Governments. That is the difference between the two amendments.

The first amendment really goes much beyond the present position as set out in the Government of India Act, 1935. As Honourable Members know, even under the present Government of India Act, 1935, it is permissible for the Central Government at least to issue directions to the Provinces, setting

out the method and manner in which a particular law may be carried out. The first amendment I say even takes away that power which the present Government of India Act, 1935, gives to the Centre. The amendment of my Honourable Friend, Pandit Kunzru wishes to restore the position back to what it now found in the Government of India Act, 1935.

Pandit Hirday Nath Kunzru : I go a little beyond that. The second part of my amendment goes beyond any power which the Government of India now enjoy under the Government of India Act, 1935.

The Honourable Dr. B. R. Ambedkar : Well, that may be so. That I said is the position as I understand it. Now, Sir, I will deal with the major amendment which wants to go back to a position where the Centre will not even have the power to issue directions, and for that purpose, it is necessary for me to go into the history of this particular matter. It must have been noticed—-and I say it merely, as a matter of fact and without any kind of insinuation in it at all,—that a large number of members who have spoken in favour of the first amendment are mostly Muslims. One of them, my Friend Mr. Pecker, thought that it was a sacred duty of every Member of this House to oppose the proviso. I have no idea.....

B. Pecker Sahib Bahadur : **I** have not said that, Sir. I only said that it is the duty of every Member to act according to Ins conscience.

The Honourable Dr. B. R. Ambedkar: By which I mean, I suppose that every Member who has conscience must oppose the proviso. It cannot mean anything else. *(Laughter.)*

B. Pecker Sahib Bahadur : Certainly not.

The Honourable Dr. B. R. Ambedkar : Now, Sir, this peculiar phenomenon of Muslim members being concerned in this particular proviso, as I said, has a history behind it, and I am sorry to say that my Honourable Friend, Pandit Kunzru forgot altogether that history ; I have no doubt about it that he is familiar with that history as I am myself.

This matter goes back to the Round Table Conference which was held in

1930. Everyone who is familiar with what happened in the Round Table Conference, which was held in 1930 will remember that the two major parties who were represented in that Conference, namely the Muslim League and the Indian National Congress, found themselves at logger heads on many points of constitutional importance.

One of the points on which they found themselves at logger-heads was the question of provincial autonomy. Of course, it was realised that there could not be complete provincial autonomy in a Constitution which intended to preserve the unity of India, both in the matter of legislation and administration. But the Muslim League took up such an adamant attitude on this point that

the Secretary of State had to make certain concessions in order to reconcile the Muslim League to the acceptance of some sort of responsible Government at the Centre. One of the things which the then Secretary of State did was to introduce this clause which is contained in Section 126 of the Government of India Act which stated that the authority of the Central Government, so far as legislation in the concurrent field was concerned, was to be strictly limited to the issue of directions and it should not extend to the actual administration of the matter itself. The argument was that there would have been no objection on the part of the Muslim League to have the Centre administer a particular law in the concurrent field if the Central Government was not likely to be dominated by the Hindus. That was so expressly stated, I remember, during the debates in the Round Table Conference. It is because the Muslim League Governments which came into existence in the provinces where the Muslims formed a majority, such as for instances in the North-West Frontier Province, the Punjab, Bengal and to some extent Assam, did not want it in the field which they thought exclusively belonged to them by reason of their majority, that the Secretary of State held to make this concession. I have no doubt about it that this was a concession. It was not an acceptance of the principle that the Centre should have no authority to administer a law passed in the concurrent field. My submission therefore is that the position stated in Section 126 of the Government of India Act, 1935, is not to be justified on principle; it is justified because it was a concession made to the Muslims. Therefore, it is not proper to rely upon Section 126 in drawing any support for the arguments which have been urged in favour of this amendment.

Sir, that the position stated in Section 126 of the Government of India Act was fundamentally wrong was admitted by the Secretary of State in a subsequent legislation which the Parliament enacted just before the war was declared. As Honourable Members will remember, Section 126 was supplemented by Section 126-A by a law made by Parliament just before the war was declared. Why was it that the Parliament found it necessary to enact Section 126-A ? As you will remember Section 126-A is one of the most drastic clauses in the Government of India Act so far as concurrent legislation is concerned. It permits the Central Government to legislate not only on provincial subjects, but it permits the Central Government to take over the administration both of provincial as well as concurrent subjects. That was done because the Secretary of State felt that at least in the war period, Section 126 might prove itself absolutely fatal to the administration of the country. My submission therefore is that Section 126-A which was enacted for emergency purposes is applicable not only for an emergency, but for ordinary

purposes and ordinary times as well. My first submission to the House therefore is this ; that no argument that can be based on the principle of Section 126 can be valid in these days for the circumstances which I have mentioned.

Coming to the proviso, ...

B. Pocker Sahib Bahadur : With your permission. Sir, may I just correct my learned Friend ? This Constitution is being framed for the present Indian Union in which there is not a single province in which the Muslims are in a majority and therefore there is absolutely no point in saying that it is the Muslim members that are moving this amendment in the interests of the Muslim League. It is a very misleading argument based on a misconception of fact and the Honourable Minister for Law forgets the fact that we in the present Indian Union, Muslims as such, are not in the least to be particularly benefited by this amendment.

The Honourable Dr. B. R. Ambedkar : I was just going to say that although that is a statement of fact which I absolutely accept, my complaint is that the Muslim members have not yet given up the philosophy of the Muslim League which they ought to. They are repeating arguments which were valid when the Muslim League was there and the Muslim Provinces were there.

They have no validity now. I cannot understand why the Muslims are repeating them. *(Interruption.)*

Mr. Vice-President : Order, order.

The Honourable Dr. B. R. Ambedkar : I was saying that there is no substance in the argument that we are departing from the provision contained in Section 126 of the Government of India Act. As I said, that section was not based upon any principle at all.

In support of the proviso, I would like to say two things. First, there is ample precedent for the proposition enshrined so to say in this proviso. My Honourable Friend Mr. T. T. Krishnamachari has dealt at some length with the position as it is found in various countries which have a federal Constitution. I shall not therefore labour that point again. But I would just like to make one reference to the Australian Constitution. In the Australian Constitution we have also what is called a concurrent field of legislation. Under the Australian Constitution it is open to the Commonwealth Parliament in making any law in the concurrent field to take upon itself the authority to administer. I shall just quote one short paragraph from a well known book called " Legislative and Executive Powers in Australia " by a great lawyer Mr. Wynes. This is what he says ::

" Lastly, there are Commonwealth Statutes. Letroy states that executive power is derived from legislative power unless there be some restraining

enactment. This proposition is true, it seems, in Canada, where the double enumeration commits to each Government exclusive legislative powers, but is not applicable in Australia. Where the legislative power of the Commonwealth is exclusive—-e.g., in the case of defence—the executive power in relation to the subject of the grant inheres in the Commonwealth, but in respect of concurrent powers, the executive function remains with the States until the Commonwealth legislative power is exercised."

Which means that in the concurrent field, the executive authority remains with the States so long as the Commonwealth has not exercised the power of making laws which it had. The moment it does, the execution of that law is automatically-transferred to the Commonwealth. Therefore, comparing the position as setout in the proviso with the position as it is found in Australia, I submit that we are not making any violent departure from any federal principle that one may like to quote. Now, .Sir, my second submission is that there is ample justification for a proviso of this sort, which permits the Centre in any particular case to take upon itself the administration of certain laws in the Concurrent List. Let me give one or two illustrations. The Constituent Assembly has passed article II, which abolishes untouchability. It also permits Parliament to pass appropriate legislation to make the abolition of untouchability a reality. Supposing the Centre makes a law prescribing a certain penalty, certain prosecution for obstruction caused to the untouchables in the exercising of their civic rights. Supposing a law like that was made, and supposing that in any particular province the sentiment in favour of the abolition of untouchability is not as genuine and as intense nor is the Government interested in seeing that the untouchables have all the civic rights which the Constitution guarantees is it logical, is it fair that the Centre on which so much responsibility has been cast by the Constitution in the matter of untouchability, should merely pass a law and sit with folded hands, waiting and watching as to what the Provincial Governments are doing in the matter of executing all those particular laws ? As everyone will remember, the execution of such a law might require the establishing of additional police, special machinery for taking down if the offence was made cognizable, for prosecution and for all costs of administrative matters without which the law could not be made good. Should not the Centre which enacts a law-of this character have the authority to execute it ? I would like to know it there is anybody who can say that on a matter of such vital importance, the Centre should do nothing more than enact a law.

Let me give you another illustration. We have got in this country the practice of child marriage against which there has been so much sentiment and so much outcry. Laws have been passed by the Centre. They are left to be

executed by the provinces. We all know what the effect has been as a result of this dichotomy between legislative authority resting in one Government and executive authority resting in the other. I understand (and I think my friend Pandit Bhargava who has been such a staunch supporter of this matter has been staling .always in this House) that notwithstanding the legislation, child marriages are as rampant as they were. Is it not desirable that the Centre which is so much interested in putting down these evils should have some authority for executing laws of this character ? Should it merely allow the provinces the liberty to do what they liked with the legislation made by Parliament with such intensity of feeling and such keen desire of putting it into effect ? Take, for instance, another case—Factory Legislation. I can remember very well when I was the Labour Member of the Government of India, cases after causes in which it was reported that no Provincial government or at least a good many of them were not prepared to establish Factory Inspectors and to appoint them in order to see that the Factory Laws were properly executed. Is it desirable that the labour legislations of the central Government should be mere paper legislations with no effect given to them ? How can effect be given to them unless the centre has got some authority to make good the administration of laws which it makes ? I therefore submit that having regard to the cases which I have cited—and I have no doubt Honourable Members will remember many more cases after their own experience—that a large part of legislation which the centre makes in the Concurrent field remains merely a paper legislation, for the simple reason that the Centre cannot execute its own laws. I think it is a crying situation which ought to be rectified which the proviso seeks to do.

There is one other point which I would like to mention and it is this. Really speaking, the Provincial Governments ought to welcome this proviso because there is a certain sort of financial anomaly in the existing position. For the Centre to make laws and leave to provinces the administration means imposing certain financial burdens on the provinces which is involved in the employment of the machinery for the carrying out of those laws. When the centre takes upon itself the responsibility of the executing of those laws, to that extent the provinces are relieved of any financial burden and I should have thought from that point of view this proviso should be a welcome additional relief which the provinces seek so badly. I therefore submit. Sir, that for the reasons I have given, the proviso contains a principle which this House would do well to endorse. *(Cheers).*

[All 4 amendments were negatived. Article 60 was adopted without any amendment and added to the Constitution.]